

Date of decision: 25/01/96

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

S M BHADKA

vs

STATE OF GUJARAT

Appearance:

MR DHIRENDRA MEHTA for Petitioner  
MR DA BAMBHANIA for Respondent No. 1

Coram : MR.JUSTICE C.K.THAKKER

ORAL JUDGEMENT

Rule. Mr.Bambhania, Additional Government Pleader waives service of rule. In the facts and circumstances of the case, the matter is taken up for final hearing to day.

This petition is filed against the order of transfer dt. March 9, 1995, Annexure.A to the petition by which Joint Director of Technical Education transferred the petitioner from C.U.Shah Government Polytechnic, Surendranagar to Government Diploma Pharmacy College, Lakhatar.

It is the contention of the petitioner that the impugned

order of transfer was not passed in public interest or for administrative exigency. Looking to the impugned order, it is stated therein that the petitioner was working as Store Keeper in C.U.Shah Government Polytechnic , Surendranagar and since there was some quarrel between the Government employees during the pendency of the inquiry the petitioner was transferred as Store Keeper to Government Diploma Pharmacy College, Lakhatar. It is asserted by the petitioner that he has not taken part in any manner whatsoever in the above quarrel, nor he has taken part in favour of any group. It is also stated by him that no regular departmental inquiry was held against him. A preliminary inquiry was ordered and in that inquiry the he was completely and totally exonerated. In view of the above assertion of the petitioner, my learned brother M.S.Shah J. passed the following order on 30.11.1995.

"In view of the ground urged in the order of transfer dt.

9th March 1995 at Annexure.A to this petition and the averments made in para 6 also of the petition, regarding conclusion of the enquiry which averments are not disputed in affidavit-in-reply, respondent is directed to produce on record of this petition a copy of the Inquiry Report. S.O. to 14th December, 1955.

30.11.95. Sd.M.S.Shah J."

Looking to the affidavit also it does not appear to be the stand of the Joint Director of the Technical Education that the petitioner was found to have taken interest in one group or the other. On the contrary, looking to para 6 of the counter, it clearly appears that the case of the respondent authority is that the petitioner was transferred "on administrative ground and public interest". But immediately in the next breath, it is stated that "it is apprehended that if the petitioner is transferred to Surendranagar, atmosphere will be disturbed." Now, in view of the assertion of the petitioner, it was expected of the respondent authorities to place necessary report of the Preliminary inquiry on record. It was not done. Even at the time of hearing, no such report was made available to me. In the above order of my learned brother M.S.Shah J. also direction was issued so that conscious of the court is satisfied.

For the aforesaid reasons, this petition is allowed. The order at Annexure.A dt. March 9, 1995 is hereby quashed and set aside. It is, however, clarified that if the authority so think it may pass appropriate order in accordance with law. It is open to the petitioner to challenge that order as and when the order is made. Rule is accordingly made absolute with no order as to costs.

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